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09/394,289	09/10/1999	JACK G. SCARPA	N800/ST-108	3986

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EXAMINER

KIM, CHRISTOPHER S

ART UNIT	PAPER NUMBER
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3752

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Paper No. 20

Application Number: 09/394,289
Filing Date: September 10, 1999
Appellant(s): SCARPA ET AL.

MAILED
MAR 06 2002
GROUP 3700

Norman Friedland
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed January 22, 2002.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

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(2) *Related Appeals and Interferences*

The brief does not contain a statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief. Therefore, it is presumed that there are none. The Board, however, may exercise its discretion to require an explicit statement as to the existence of any related appeals and interferences.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is substantially correct. The changes are as follows: in issue number 2, line 1, "claims 2 and 4" should read --claims 2 and 3--.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 1-7 stand or fall together.

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

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(9) Prior Art of Record

3,185,396	Black	5-1965
4,005,825	Schowiak	2-1977
5,419,491	Breitsprecher	5-1995
5,645,217	Warren	7-1997

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-7 stand rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The application as filed does not disclose "said fluid tip including a circular shaped member abutting the inner surface of said air cap" as recited in amended claim 1.

Claims 1 and 4 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Black.

Black discloses a spray gun 62 including a handle 68, the spray gun having: a central passage (passage in gun 62 leading to additional passage formed by tube 12); a concentric passage (passage in gun 62 leading to additional concentric passage formed by tube 27); a nozzle internal of the spray gun (inherent in spray gun 62); a double concentric tube assembly 12, 27; a fluid tip 52; an air cap 15; a dry powdered nozzle 14. Although the spray gun is disclosed as spraying tar and glass fiber, the spray gun is capable of spraying resin and dry powder. Black does not disclose flats on the circular

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shaped member of the fluid tip. It is well known in the art to use flats on the circular shaped member (the cylindrical surface of fitting 48 of fluid tip 52) to accommodate a wrench. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have added flats to the fluid tip of Black to accommodate a wrench.

Claims 2 and 3 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Black in view of Breitsprecher.

Black discloses a sleeve 11 having a single passage 60a and not diametrically opposed passages. Breitsprecher discloses, in figure 3, diametrically opposed passages 46, 47. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have added a second passage that is diametrically opposed as taught by Breitsprecher to the sleeve of Black to promote uniform addition of dry powder.

Claim 5 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Black in view of Schowiak.

Black discloses the claimed limitations with the exception of a receiving box. Schowiak discloses a receiving box 24 attached to a handle 14. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have incorporate the receiving box of Schowiak to the handle of Black to relocate the fiber cutting mechanism, which would have increased the ease of handling the spray gun.

Claim 6 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Black in view of Schowiak as applied to claim 5 above, and further in view of Warren.

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Black discloses the claimed limitations with the exception of a mixer and manifold. Warren discloses, in figure 1, a mixer 46, a manifold 45, connection means 32, 33, and a hose 48. It would have been obvious to a person having ordinary skill in the art at the time of the invention to use the manifold and mixer of Warren to supply the spray gun of Black.

Claim 7 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Black in view of Schowiak and Warren as applied to claim 6 above, and further in view of Breitsprecher.

Black discloses, in column 4, lines 3-8, a valve actuating trigger. Black discloses a valve connected to the central passage of the spray gun and not the additional central passage. It is a matter of design choice to locate the valve within the gun or within the additional central passage as shown by Breitsprecher. The valve 27 of Breitsprecher extends to opening 40 in the additional central passage. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have located the valve in the additional central passage of Black as taught by Breitsprecher to prevent flow within the additional central passage after the valve is closed.

(11) Response to Argument

In response to appellant's argument that the flats are not used to accommodate a wrench, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

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In response to appellant's argument directed to the size of Black's structure and the operability with one hand, the preamble of the claim recites a "miniaturized spray gun". No other claim limitation seems to be directed at the size of the spray gun nor the operability of using only one hand. The term "miniaturized" is considered a relative term. The device of Black is "miniaturized" as compared to a spray gun that cannot be hand held.

In response to appellant's argument that the diametrically opposed passages of Breitsprecher are for transmitting dry powder. Breitsprecher is relied on for the teaching of providing a diametrically opposed passages and not for adding dry powder. Black discloses a single passage 60a for the addition of dry powder. Breitsprecher teaches to position a second passage, diametrically opposed to the first passage, to mix two fluid flows.

In response to appellant's argument that "an air cap mounted over said fluid tip and defining with said fluid tip and air nozzle for flowing air into said resin stream discharging from said central orifice and defining an atomized convergent spray having a low pressure zone..." is not disclosed, Black discloses an air cap 15 mounted over said fluid tip (cap having orifice 52) and defining with said fluid tip and air nozzle for flowing air (air flow defined by B) into said resin stream (flow C) discharging from said central orifice 52 and defining an atomized convergent spray having a low pressure zone. The air cap 15 of Black converges the flow. The flow also defines a low pressure zone since the flow is atomized.

In response to appellant's argument that "a dry powdered nozzle having angled flow passages for directing dry powder into the low pressure zone..." is not disclosed, Black discloses a dry powdered nozzle 14 having angled flow passages for directing dry powder into the low pressure zone.

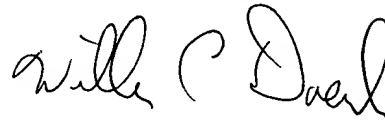
In response to appellant's argument that "said fluid tip including a circular shaped member abutting the inner surfaces of said air cap and having flats formed thereon to define gaps between said air cap and said circular shaped member to allow air from said concentric passage to flow there between..." is not disclosed, this limitation stands rejected under 35 U.S.C. 112, first paragraph, as new matter.

In response to appellant's argument that the rejection under 35 U.S.C. 112, first paragraph is unjustified, appellant's cited portion of page 15, line 3 et sequa, defines the diameter of the circular section of the fluid tip as being substantially equal to the inner diameter of tubular portion 46. It does not provide any evidence that the circular shaped member of the fluid tip 70 abuts the inner surfaces of the air cap 90. The internal surface of the air cap 90 fits over the external surface of tubular portion 46 (see appellant's figure 3). Even if the internal surface of the air cap 90 converges to a diameter smaller than the external diameter of the fluid tip 70, there is no disclosure of the longitudinal positioning (along the axis of valve stem 29) of the fluid tip 70 relative to the air cap 90. There is not disclosure of the fluid tip "abutting" the air cap.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



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CK

March 5, 2002

Conferees

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